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Brownstein Hyatt Farber Schreck, LLP
1350 I Street, NW, Suite 510
Washington, D.C. 20005-3355
T 202 296 7353 F 202 296.7009

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Brownstein | Hyatt
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William Moschella
202 652-2346 tel
202.296.7009 fax
wmoschella@bhfs.com

June 16, 2009

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SUPREME COURT OF THE UNITED STATES

Nos. 06–984 (08A98), 08–5573 (08A99), and 08–5574 (08A99)

JOSE ERNESTO MEDELLIN

06–984 (08A98) *v.*

TEXAS

ON APPLICATION TO RECALL AND STAY MANDATE AND FOR STAY

JOSE ERNESTO MEDELLIN

08–5573 (08A99) *v.*

TEXAS

ON APPLICATION FOR STAY AND PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

IN RE JOSE ERNESTO MEDELLIN

08–5574 (08A99)

ON APPLICATION FOR STAY AND ON PETITION FOR A WRIT OF HABEAS CORPUS

[August 5, 2008]

JUSTICE STEVENS, dissenting.

Earlier this Term, in *Medellín* v. *Texas*, 552 U. S. ___ (2008), we concluded that neither the President nor the International Court of Justice (ICJ) has the authority to require Texas to determine whether its violation of the Vienna Convention prejudiced petitioner. Although I agreed with the Court's judgment, I wrote separately to make clear my view that Texas retained the authority—and, indeed, the duty as a matter of international law—to remedy the potentially significant breach of the United States' treaty obligations identified in the President's Memorandum to the Attorney General. Because it ap-

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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MEDELLIN *v.* TEXAS

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

No. 06–984. Argued October 10, 2007—Decided March 25, 2008

In the *Case Concerning Avena and Other Mexican Nationals* (*Mex. v. U. S.*), 2004 I. C. J. 12 (*Avena*), the International Court of Justice (ICJ) held that the United States had violated Article 36(1)(b) of the Vienna Convention on Consular Relations (Vienna Convention or Convention) by failing to inform 51 named Mexican nationals, including petitioner Medellín, of their Vienna Convention rights. The ICJ found that those named individuals were entitled to review and reconsideration of their U. S. state-court convictions and sentences regardless of their failure to comply with generally applicable state rules governing challenges to criminal convictions. In *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331—issued after *Avena* but involving individuals who were not named in the *Avena* judgment—this Court held, contrary to the ICJ's determination, that the Convention did not preclude the application of state default rules. The President then issued a memorandum (President's Memorandum or Memorandum) stating that the United States would "discharge its international obligations" under *Avena* "by having State courts give effect to the decision."

Relying on *Avena* and the President's Memorandum, Medellín filed a second Texas state-court habeas application challenging his state capital murder conviction and death sentence on the ground that he had not been informed of his Vienna Convention rights. The Texas Court of Criminal Appeals dismissed Medellín's application as an abuse of the writ, concluding that neither *Avena* nor the President's Memorandum was binding federal law that could displace the State's limitations on filing successive habeas applications.

Held: Neither *Avena* nor the President's Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions. Pp. 8–37.

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1. The *Avena* judgment is not directly enforceable as domestic law in state court. Pp. 8–27.

(a) While a treaty may constitute an international commitment, it is not binding domestic law unless Congress has enacted statutes implementing it or the treaty itself conveys an intention that it be "self-executing" and is ratified on that basis. See, *e.g.*, *Foster* v. *Neilson*, 2 Pet. 253, 314. The *Avena* judgment creates an international law obligation on the part of the United States, but it is not automatically binding domestic law because none of the relevant treaty sources—the Optional Protocol, the U. N Charter, or the ICJ Statute—creates binding federal law in the absence of implementing legislation, and no such legislation has been enacted.

The most natural reading of the Optional Protocol is that it is a bare grant of jurisdiction. The Protocol says nothing about the effect of an ICJ decision, does not commit signatories to comply therewith, and is silent as to any enforcement mechanism The obligation to comply with ICJ judgments is derived from Article 94 of the U. N. Charter, which provides that "[e]ach . . . Member . . . undertakes to comply with the [ICJ's] decision . . . in any case to which it is a party." The phrase "undertakes to comply" is simply a commitment by member states to take future action through their political branches. That language does not indicate that the Senate, in ratifying the Optional Protocol, intended to vest ICJ decisions with immediate legal effect in domestic courts.

This reading is confirmed by Article 94(2)—the enforcement provision—which provides the sole remedy for noncompliance, referral to the U N. Security Council by an aggrieved state. The provision of an express diplomatic rather than judicial remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts See *Sanchez-Llamas*, 548 U S., at 347. Even this "quintessentially *international* remed[y]," *id.*, at 355, is not absolute. It requires a Security Council resolution, and the President and Senate were undoubtedly aware that the United States retained the unqualified right to exercise its veto of any such resolution. Medellín's construction would eliminate the option of noncompliance contemplated by Article 94(2), undermining the ability of the political branches to determine whether and how to comply with an ICJ judgment.

The ICJ Statute, by limiting disputes to those involving nations, not individuals, and by specifying that ICJ decisions have no binding force except between those nations, provides further evidence that the *Avena* judgment does not automatically constitute federal law enforceable in U. S. courts. Medellin, an individual, cannot be considered a party to the *Avena* decision. Finally, the United States' interpretation of a treaty "is entitled to great weight," *Sumitomo Shoji*

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America, Inc. v. *Avagliano*, 457 U. S., at 184–185, and the Executive Branch has unfailingly adhered to its view that the relevant treaties do not create domestically enforceable federal law. Pp. 8–17.

(b) The foregoing interpretive approach—parsing a treaty's text to determine if it is self-executing—is hardly novel. This Court has long looked to the language of a treaty to determine whether the President who negotiated it and the Senate that ratified it intended for the treaty to automatically create domestically enforceable federal law. See, *e.g.*, *Foster*, *supra*. Pp. 18–20.

(c) The Court's conclusion that *Avena* does not by itself constitute binding federal law is confirmed by the "postratification understanding" of signatory countries. See *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 226. There are currently 47 nations that are parties to the Optional Protocol and 171 nations that are parties to the Vienna Convention. Yet neither Medellín nor his *amici* have identified a single nation that treats ICJ judgments as binding in domestic courts. The lack of any basis for supposing that any other country would treat ICJ judgments as directly enforceable as a matter of their domestic law strongly suggests that the treaty should not be so viewed in our courts. See *Sanchez-Llamas*, 548 U. S., at 343–344, and n. 3.

The Court's conclusion is further supported by general principles of interpretation. Given that the forum state's procedural rules govern a treaty's implementation absent a clear and express statement to the contrary, see, *e.g.*, *id.*, at 351, one would expect the ratifying parties to the relevant treaties to have clearly stated any intent to give ICJ judgments such effect. There is no statement in the Optional Protocol, the U. N. Charter, or the ICJ Statute that supports this notion. Moreover, the consequences of Medellín's argument give pause: neither Texas nor this Court may look behind an ICJ decision and quarrel with its reasoning or result, despite this Court's holding in *Sanchez-Llamas* that "[n]othing in the [ICJ's] structure or purpose . . . suggests that its interpretations were intended to be conclusive on our courts." *Id.*, at 354. Pp. 20–24.

(d) The Court's holding does not call into question the ordinary enforcement of foreign judgments. An agreement to abide by the result of an international adjudication can be a treaty obligation like any other, so long as the agreement is consistent with the Constitution. In addition, Congress is up to the task of implementing non-self-executing treaties, even those involving complex commercial disputes. Medellín contends that domestic courts generally give effect to foreign judgments, but the judgment Medellín asks us to enforce is hardly typical: It would enjoin the operation of state law and force the State to take action to "review and reconside[r]" his case. Foreign

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judgments awarding injunctive relief against private parties, let alone sovereign States, "are not generally entitled to enforcement." Restatement (Third) of Foreign Relations Law of the United States §481, Comment *b*, p. 595 (1986). Pp. 24–27.

2. The President's Memorandum does not independently require the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in *Avena* without regard to state procedural default rules. Pp. 27–37.

(a) The President seeks to vindicate plainly compelling interests in ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law. But those interests do not allow the Court to set aside first principles. The President's authority to act, as with the exercise of any governmental power, "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 585.

Justice Jackson's familiar tripartite scheme provides the accepted framework for evaluating executive action in this area. First, "[w]hen the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown*, 343 U. S., at 635 (Jackson, J., concurring). Second, "[w]hen the President acts in absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight in which he and Congress may have concurrent authority, or in which its distribution is uncertain." *Id.*, at 637. In such a circumstance, Presidential authority can derive support from "congressional inertia, indifference or quiescence." *Ibid.* Finally, "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb," and the Court can sustain his actions "only by disabling the Congress from acting upon the subject." *Id.*, at 637–638. Pp. 28–29.

(b) The United States marshals two principal arguments in favor of the President's authority to establish binding rules of decision that preempt contrary state law. The United States argues that the relevant treaties give the President the authority to implement the *Avena* judgment and that Congress has acquiesced in the exercise of such authority. The United States also relies upon an "independent" international dispute-resolution power. We find these arguments, as well as Medellín's additional argument that the President's Memorandum is a valid exercise of his "Take Care" power, unpersuasive. Pp. 29–37.

(i) The United States maintains that the President's Memo-

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randum is implicitly authorized by the Optional Protocol and the U. N. Charter But the responsibility for transforming an international obligation arising from a non-self-executing treaty into domestic law falls to Congress, not the Executive. *Foster*, 2 Pet., at 315. It is a fundamental constitutional principle that "'[t]he power to make the necessary laws is in Congress; the power to execute in the President.'" *Hamdan* v. *Rumsfeld*, 548 U. S. 557, 591. A non-self-executing treaty, by definition, is one that was ratified with the understanding that it is not to have domestic effect of its own force. That understanding precludes the assertion that Congress has implicitly authorized the President—acting on his own—to achieve precisely the same result. Accordingly, the President's Memorandum does not fall within the first category of the *Youngstown* framework. Indeed, because the non-self-executing character of the relevant treaties not only refutes the notion that the ratifying parties vested the President with the authority to unilaterally make treaty obligations binding on domestic courts, but also implicitly prohibits him from doing so, the President's assertion of authority is within *Youngstown*'s third category, not the first or even the second

The United States maintains that congressional acquiescence requires that the President's Memorandum be given effect as domestic law. But such acquiescence is pertinent when the President's action falls within the second *Youngstown* category, not the third. In any event, congressional acquiescence does not exist here. Congress' failure to act following the President's resolution of prior ICJ controversies does not demonstrate acquiescence because in none of those prior controversies did the President assert the authority to transform an international obligation into domestic law and thereby displace state law. The United States' reliance on the President's "related" statutory responsibilities and on his "established role" in litigating foreign policy concerns is also misplaced. The President's statutory authorization to represent the United States before the U. N., the ICJ, and the U. N. Security Council speaks to his *international* responsibilities, not to any unilateral authority to create domestic law.

The combination of a non-self-executing treaty and the lack of implementing legislation does not preclude the President from acting to comply with an international treaty obligation by other means, so long as those means are consistent with the Constitution. But the President may not rely upon a non-self-executing treaty to establish binding rules of decision that pre-empt contrary state law. Pp. 30–35.

(ii) The United States also claims that—independent of the United States' treaty obligations—the Memorandum is a valid exercise of the President's foreign affairs authority to resolve claims dis-

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putes. See, *e.g.*, *American Ins. Assn.* v. *Garamendi*, 539 U S 396, 415. This Court's claims-settlement cases involve a narrow set of circumstances. the making of executive agreements to settle civil claims between American citizens and foreign governments or foreign nationals. They are based on the view that "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned," can "raise a presumption that the [action] had been [taken] in pursuance of its consent." *Dames & Moore* v. *Regan*, 453 U. S. 654, 668 But "[p]ast practice does not, by itself, create power." *Ibid* The President's Memorandum—a directive issued to state courts that would compel those courts to reopen final criminal judgments and set aside neutrally applicable state laws—is not supported by a "particularly longstanding practice." The Executive's limited authority to settle international claims disputes pursuant to an executive agreement cannot stretch so far Pp. 35–37.

(iii) Medellin's argument that the President's Memorandum is a valid exercise of his power to "Take Care" that the laws be faithfully executed, U. S. Const , Art. II, §3, fails because the ICJ's decision in *Avena* is not domestic law. P. 37

223 S. W. 3d 315, affirmed

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined. STEVENS, J , filed an opinion concurring in the judgment. BREYER, J , filed a dissenting opinion, in which SOUTER and GINSBURG, JJ., joined

SUPREME COURT OF THE UNITED STATES

No. 06–984

JOSE ERNESTO MEDELLIN, PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[March 25, 2008]

JUSTICE STEVENS, concurring in the judgment.

There is a great deal of wisdom in JUSTICE BREYER's dissent. I agree that the text and history of the Supremacy Clause, as well as this Court's treaty-related cases, do not support a presumption against self-execution. See *post*, at 5–10. I also endorse the proposition that the Vienna Convention on Consular Relations, Apr. 24, 1963, [1970] 21 U. S. T. 77, T. I. A. S. No. 6820, "is itself self-executing and judicially enforceable" *Post*, at 19. Moreover, I think this case presents a closer question than the Court's opinion allows. In the end, however, I am persuaded that the relevant treaties do not authorize this Court to enforce the judgment of the International Court of Justice (ICJ) in *Case Concerning Avena and Other Mexican Nationals* (*Mex.* v. *U. S.*), 2004 I. C. J. 12 (Judgment of Mar. 31) (*Avena*).

The source of the United States' obligation to comply with judgments of the ICJ is found in Article 94(1) of the United Nations Charter, which was ratified in 1945. Article 94(1) provides that "[e]ach Member of the United Nations *undertakes to comply* with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051, T. S. No. 993 (emphasis added). In my view, the words "undertakes to comply"—while not the model of either a self-executing or a non-self-executing commitment—are most naturally read as a promise to take additional steps

to enforce ICJ judgments.

Unlike the text of some other treaties, the terms of the United Nations Charter do not necessarily incorporate international judgments into domestic law. Cf., *e.g.*, United Nations Convention on the Law of the Sea, Annex VI, Art. 39, Dec. 10, 1982, S. Treaty Doc. No. 103–39, 1833 U. N. T. S. 570 ("[D]ecisions of the [Seabed Disputes] Chamber shall be enforceable in the territories of the States Parties in the same manner as judgments or orders of the highest court of the State Party in whose territory the enforcement is sought"). Moreover, Congress has passed implementing legislation to ensure the enforcement of other international judgments, even when the operative treaty provisions use far more mandatory language than "undertakes to comply."[1]

On the other hand Article 94(1) does not contain the kind of unambiguous language foreclosing self-execution that is found in other treaties. The obligation to undertake to comply with ICJ decisions is more consistent with self-execution than, for example, an obligation to enact legislation. Cf., *e.g.*, International Plant Protection Convention, Art. I, Dec. 6, 1951, [1972] 23 U. S. T. 2770, T. I. A. S. No. 7465 ("[T]he contracting Governments undertake to adopt the legislative, technical and administrative measures specified in this Convention"). Further-

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[1] See, *e.g.*, Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), Art 54(1), Mar 18, 1965, [1966] 17 U S. T. 1291, T. I. A. S. No. 6090 ("Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State"); 22 U. S. C. §1650a ("An award of an arbitral tribunal rendered pursuant to chapter IV of the [ICSID Convention] shall create a right arising under a treaty of the United States The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States")

more, whereas the Senate has issued declarations of non-self-execution when ratifying some treaties, it did not do so with respect to the United Nations Charter.[2]

Absent a presumption one way or the other, the best reading of the words "undertakes to comply" is, in my judgment, one that contemplates future action by the political branches. I agree with the dissenters that "Congress is unlikely to authorize automatic judicial enforceability of *all* ICJ judgments, for that could include some politically sensitive judgments and others better suited for enforcement by other branches." *Post*, at 24. But this concern counsels in favor of reading any ambiguity in Article 94(1) as leaving the choice of whether to comply with ICJ judgments, and in what manner, "to the political, not the judicial department." *Foster* v. *Neilson*, 2 Pet. 253, 314 (1829).[3]

The additional treaty provisions cited by the dissent do not suggest otherwise. In an annex to the United Nations Charter, the Statute of the International Court of Justice (ICJ Statute) states that a decision of the ICJ "has no binding force except between the parties and in respect of that particular case." Art. 59, 59 Stat. 1062. Because I read that provision as confining, not expanding, the effect of ICJ judgments, it does not make the undertaking to comply with such judgments any more enforceable than

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[2] Cf., *e.g.*, U. S. Reservations, Declarations and Understandings, International Covenant on Civil and Political Rights, 138 Cong. Rec. 8071 (1992) ("[T]he United States declares that the provisions of Articles 1 through 27 of the Covenant are not self-executing")

[3] Congress' implementation options are broader than the dissent suggests. In addition to legislating judgment-by-judgment, enforcing all judgments indiscriminately, and devising "legislative bright lines," *post*, at 24, Congress could, for example, make ICJ judgments enforceable upon the expiration of a waiting period that gives the political branches an opportunity to intervene. Cf., *e.g.*, 16 U. S. C. §1823 (imposing a 120-day waiting period before international fishery agreements take effect)

the terms of Article 94(1) itself. That the judgment is "binding" as a matter of international law says nothing about its domestic legal effect. Nor in my opinion does the reference to "compulsory jurisdiction" in the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention, Art. I, Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820, shed any light on the matter. This provision merely secures the consent of signatory nations to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. See ICJ Statute, Art. 36(1), 59 Stat. 1060 ("The jurisdiction of the Court comprises . . . all matters specially provided for . . in treaties and conventions in force").

Even though the ICJ's judgment in *Avena* is not "the supreme Law of the Land," U. S. Const., Art. VI, cl. 2, no one disputes that it constitutes an international law obligation on the part of the United States. *Ante*, at 8. By issuing a memorandum declaring that state courts should give effect to the judgment in *Avena*, the President made a commendable attempt to induce the States to discharge the Nation's obligation. I agree with the Texas judges and the majority of this Court that the President's memorandum is not binding law. Nonetheless, the fact that the President cannot legislate unilaterally does not absolve the United States from its promise to take action necessary to comply with the ICJ's judgment.

Under the express terms of the Supremacy Clause, the United States' obligation to "undertak[e] to comply" with the ICJ's decision falls on each of the States as well as the Federal Government. One consequence of our form of government is that sometimes States must shoulder the primary responsibility for protecting the honor and integrity of the Nation. Texas' duty in this respect is all the greater since it was Texas that—by failing to provide consular notice in accordance with the Vienna Conven-

tion—ensnared the United States in the current controversy. Having already put the Nation in breach of one treaty, it is now up to Texas to prevent the breach of another.

The decision in *Avena* merely obligates the United States "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals," 2004 I. C. J., at 72, ¶153(9), "with a view to ascertaining" whether the failure to provide proper notice to consular officials "caused actual prejudice to the defendant in the process of administration of criminal justice," *id.*, at 60, ¶121. The cost to Texas of complying with *Avena* would be minimal, particularly given the remote likelihood that the violation of the Vienna Convention actually prejudiced José Ernesto Medellín. See *ante*, at 4–6, and n. 1. It is a cost that the State of Oklahoma unhesitatingly assumed.[4]

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[4]In *Avena*, the ICJ expressed "great concern" that Oklahoma had set the date of execution for one of the Mexican nationals involved in the judgment, Osbaldo Torres, for May 18, 2004. 2004 I. C. J., at 28, ¶21. Responding to *Avena*, the Oklahoma Court of Criminal Appeals stayed Torres' execution and ordered an evidentiary hearing on whether Torres had been prejudiced by the lack of consular notification. See *Torres* v. *Oklahoma*, No. PCD–04–442 (May 13, 2004), 43 I. L. M. 1227. On the same day, the Governor of Oklahoma commuted Torres' death sentence to life without the possibility of parole, stressing that (1) the United States signed the Vienna Convention, (2) that treaty is "important in protecting the rights of American citizens abroad," (3) the ICJ ruled that Torres' rights had been violated, and (4) the U. S. State Department urged his office to give careful consideration to the United States' treaty obligations. See Office of Governor Brad Henry, Press Release: Gov. Henry Grants Clemency to Death Row Inmate Torres (May 13, 2004), online at http://www.ok.gov/governor/display_article.php?article_id=301&article_type=1 (as visited Mar. 20, 2008, and available in Clerk of Court's case file). After the evidentiary hearing, the Oklahoma Court of Criminal Appeals held that Torres had failed to establish prejudice with respect to the guilt phase of his trial, and that any prejudice with respect to the sentencing phase had been mooted by the commutation order. *Torres* v.

On the other hand, the costs of refusing to respect the ICJ's judgment are significant The entire Court and the President agree that breach will jeopardize the United States' "plainly compelling" interests in "ensuring the reciprocal observance of the Vienna Convention, protecting relations with foreign governments, and demonstrating commitment to the role of international law." *Ante*, at 28. When the honor of the Nation is balanced against the modest cost of compliance, Texas would do well to recognize that more is at stake than whether judgments of the ICJ, and the principled admonitions of the President of the United States, trump state procedural rules in the absence of implementing legislation.

The Court's judgment, which I join, does not foreclose further appropriate action by the State of Texas.

Oklahoma, 120 P 3d 1184 (2005).

SUPREME COURT OF THE UNITED STATES

No. 06–984

JOSE ERNESTO MEDELLIN, PETITIONER *v.* TEXAS

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

[March 25, 2008]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The International Court of Justice (ICJ), located in the Hague, is a tribunal established pursuant to the United Nations Charter to adjudicate disputes between member states. In the *Case Concerning Avena and Other Mexican Nationals* (*Mex.* v. *U. S.*), 2004 I. C. J. 12 (Judgment of Mar. 31) (*Avena*), that tribunal considered a claim brought by Mexico against the United States. The ICJ held that, based on violations of the Vienna Convention, 51 named Mexican nationals were entitled to review and reconsideration of their state-court convictions and sentences in the United States. This was so regardless of any forfeiture of the right to raise Vienna Convention claims because of a failure to comply with generally applicable state rules governing challenges to criminal convictions.

In *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331 (2006)—issued after *Avena* but involving individuals who were not named in the *Avena* judgment—we held that, contrary to the ICJ's determination, the Vienna Convention did not preclude the application of state default rules. After the *Avena* decision, President George W. Bush determined,

through a Memorandum to the Attorney General (Feb. 28, 2005), App. to Pet. for Cert. 187a (Memorandum or President's Memorandum), that the United States would "discharge its international obligations" under *Avena* "by having State courts give effect to the decision."

Petitioner José Ernesto Medellín, who had been convicted and sentenced in Texas state court for murder, is one of the 51 Mexican nationals named in the *Avena* decision. Relying on the ICJ's decision and the President's Memorandum, Medellín filed an application for a writ of habeas corpus in state court. The Texas Court of Criminal Appeals dismissed Medellín's application as an abuse of the writ under state law, given Medellín's failure to raise his Vienna Convention claim in a timely manner under state law. We granted certiorari to decide two questions. *First*, is the ICJ's judgment in *Avena* directly enforceable as domestic law in a state court in the United States? *Second*, does the President's Memorandum independently require the States to provide review and reconsideration of the claims of the 51 Mexican nationals named in *Avena* without regard to state procedural default rules? We conclude that neither *Avena* nor the President's Memorandum constitutes directly enforceable federal law that pre-empts state limitations on the filing of successive habeas petitions. We therefore affirm the decision below.

I

A

In 1969, the United States, upon the advice and consent of the Senate, ratified the Vienna Convention on Consular Relations (Vienna Convention or Convention), Apr. 24, 1963, [1970] 21 U. S. T. 77, T. I. A. S. No. 6820, and the Optional Protocol Concerning the Compulsory Settlement of Disputes to the Vienna Convention (Optional Protocol or Protocol), Apr. 24, 1963, [1970] 21 U. S. T. 325, T. I. A. S. No. 6820. The preamble to the Convention provides that

its purpose is to "contribute to the development of friendly relations among nations." 21 U. S. T., at 79; *Sanchez-Llamas, supra*, at 337. Toward that end, Article 36 of the Convention was drafted to "facilitat[e] the exercise of consular functions." Art. 36(1), 21 U. S. T., at 100. It provides that if a person detained by a foreign country "so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State" of such detention, and "inform the [detainee] of his righ[t]" to request assistance from the consul of his own state. Art. 36(1)(b), *id.*, at 101.

The Optional Protocol provides a venue for the resolution of disputes arising out of the interpretation or application of the Vienna Convention. Art. I, 21 U. S. T., at 326. Under the Protocol, such disputes "shall lie within the compulsory jurisdiction of the International Court of Justice" and "may accordingly be brought before the [ICJ] . . . by any party to the dispute being a Party to the present Protocol." *Ibid.*

The ICJ is "the principal judicial organ of the United Nations." United Nations Charter, Art. 92, 59 Stat. 1051, T. S. No. 993 (1945). It was established in 1945 pursuant to the United Nations Charter. The ICJ Statute—annexed to the U. N. Charter—provides the organizational framework and governing procedures for cases brought before the ICJ. Statute of the International Court of Justice (ICJ Statute), 59 Stat. 1055, T. S. No. 993 (1945).

Under Article 94(1) of the U. N. Charter, "[e]ach Member of the United Nations undertakes to comply with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051. The ICJ's jurisdiction in any particular case, however, is dependent upon the consent of the parties. See Art. 36, 59 Stat. 1060. The ICJ Statute delineates two ways in which a nation may consent to ICJ jurisdiction: It may consent generally to jurisdiction on any question arising under a treaty or general international law, Art.

36(2), *ibid.*, or it may consent specifically to jurisdiction over a particular category of cases or disputes pursuant to a separate treaty, Art. 36(1), *ibid.* The United States originally consented to the general jurisdiction of the ICJ when it filed a declaration recognizing compulsory jurisdiction under Art. 36(2) in 1946. The United States withdrew from general ICJ jurisdiction in 1985. See U. S. Dept. of State Letter and Statement Concerning Termination of Acceptance of ICJ Compulsory Jurisdiction (Oct. 7, 1985), reprinted in 24 I. L. M. 1742 (1985). By ratifying the Optional Protocol to the Vienna Convention, the United States consented to the specific jurisdiction of the ICJ with respect to claims arising out of the Vienna Convention. On March 7, 2005, subsequent to the ICJ's judgment in *Avena*, the United States gave notice of withdrawal from the Optional Protocol to the Vienna Convention. Letter from Condoleezza Rice, Secretary of State, to Kofi A. Annan, Secretary-General of the United Nations.

B

Petitioner José Ernesto Medellín, a Mexican national, has lived in the United States since preschool. A member of the "Black and Whites" gang, Medellín was convicted of capital murder and sentenced to death in Texas for the gang rape and brutal murders of two Houston teenagers.

On June 24, 1993, 14-year-old Jennifer Ertman and 16-year-old Elizabeth Pena were walking home when they encountered Medellín and several fellow gang members. Medellín attempted to engage Elizabeth in conversation. When she tried to run, petitioner threw her to the ground. Jennifer was grabbed by other gang members when she, in response to her friend's cries, ran back to help. The gang members raped both girls for over an hour. Then, to prevent their victims from identifying them, Medellín and his fellow gang members murdered the girls and discarded

their bodies in a wooded area. Medellín was personally responsible for strangling at least one of the girls with her own shoelace.

Medellín was arrested at approximately 4 a.m. on June 29, 1993. A few hours later, between 5:54 and 7:23 a.m., Medellín was given *Miranda* warnings; he then signed a written waiver and gave a detailed written confession. App. to Brief for Respondent 32–36. Local law enforcement officers did not, however, inform Medellín of his Vienna Convention right to notify the Mexican consulate of his detention. Brief for Petitioner 6–7. Medellín was convicted of capital murder and sentenced to death; his conviction and sentence were affirmed on appeal. *Medellín* v. *State*, No. 71,997 (Tex. Crim. App., May 16, 1997), App. to Brief for Respondent 2–31.

Medellín first raised his Vienna Convention claim in his first application for state postconviction relief. The state trial court held that the claim was procedurally defaulted because Medellín had failed to raise it at trial or on direct review. The trial court also rejected the Vienna Convention claim on the merits, finding that Medellín had "fail[ed] to show that any non-notification of the Mexican authorities impacted on the validity of his conviction or punishment." *Id.*, at 62.[1] The Texas Court of Criminal

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[1]The requirement of Article 36(1)(b) of the Vienna Convention that the detaining state notify the detainee's consulate "without delay" is satisfied, according to the ICJ, where notice is provided within three working days. *Avena*, 2004 I. C. J. 12, 52, ¶97 (Judgment of Mar. 31). See *Sanchez-Llamas* v. *Oregon*, 548 U. S. 331, 362 (2006) (GINSBURG, J., concurring in judgment). Here, Medellín confessed within three hours of his arrest—before there could be a violation of his Vienna Convention right to consulate notification. App. to Brief for Respondent 32–36. In a second state habeas application, Medellín sought to expand his claim of prejudice by contending that the State's noncompliance with the Vienna Convention deprived him of assistance in developing mitigation evidence during the capital phase of his trial. This argument, however, was likely waived: Medellín had the assistance of consulate counsel

Appeals affirmed. *Id.*, at 64–65.

Medellín then filed a habeas petition in Federal District Court. The District Court denied relief, holding that Medellín's Vienna Convention claim was procedurally defaulted and that Medellín had failed to show prejudice arising from the Vienna Convention violation. See *Medellín* v. *Cockrell*, Civ. Action No. H–01–4078 (SD Tex., June 26, 2003), App. to Brief for Respondent 86–92.

While Medellín's application for a certificate of appealability was pending in the Fifth Circuit, the ICJ issued its decision in *Avena*. The ICJ held that the United States had violated Article 36(1)(b) of the Vienna Convention by failing to inform the 51 named Mexican nationals, including Medellín, of their Vienna Convention rights. 2004 I. C. J., at 53–55. In the ICJ's determination, the United States was obligated "to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the [affected] Mexican nationals." *Id.*, at 72. The ICJ indicated that such review was required without regard to state procedural default rules. *Id.*, at 56–57.

The Fifth Circuit denied a certificate of appealability. *Medellín* v. *Dretke*, 371 F. 3d 270, 281 (2004). The court concluded that the Vienna Convention did not confer individually enforceable rights. *Id.*, at 280. The court further ruled that it was in any event bound by this Court's decision in *Breard* v. *Greene*, 523 U. S. 371, 375 (1998) (*per curiam*), which held that Vienna Convention claims are subject to procedural default rules, rather than by the ICJ's contrary decision in *Avena*. 371 F. 3d, at 280.

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during the preparation of his *first* application for state postconviction relief, yet failed to raise this argument at that time. See Application for Writ of Habeas Corpus in *Ex parte Medellín*, No. 675430–A (Tex. Crim. App.), pp. 25–31. In light of our disposition of this case, we need not consider whether Medellín was prejudiced in any way by the violation of his Vienna Convention rights.

This Court granted certiorari. *Medellín* v. *Dretke*, 544 U. S. 660, 661 (2005) (*per curiam*) (*Medellín I*). Before we heard oral argument, however, President George W. Bush issued his Memorandum to the United States Attorney General, providing:

> I have determined, pursuant to the authority vested in me as President by the Constitution and the laws of the United States of America, that the United States will discharge its international obligations under the decision of the International Court of Justice in [*Avena*], by having State courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision. App. to Pet. for Cert. 187a.

Medellin, relying on the President's Memorandum and the ICJ's decision in *Avena*, filed a second application for habeas relief in state court. *Ex parte Medellín*, 223 S. W. 3d 315, 322–323 (Tex. Crim. App. 2006). Because the state-court proceedings might have provided Medellín with the review and reconsideration he requested, and because his claim for federal relief might otherwise have been barred, we dismissed his petition for certiorari as improvidently granted. *Medellín I*, *supra*, at 664.

The Texas Court of Criminal Appeals subsequently dismissed Medellín's second state habeas application as an abuse of the writ. 223 S. W. 3d, at 352. In the court's view, neither the *Avena* decision nor the President's Memorandum was "binding federal law" that could displace the State's limitations on the filing of successive habeas applications. *Ibid.* We again granted certiorari. 550 U. S. ___ (2007).

II

Medellín first contends that the ICJ's judgment in *Avena* constitutes a "binding" obligation on the state and

federal courts of the United States. He argues that "by virtue of the Supremacy Clause, the treaties requiring compliance with the *Avena* judgment are *already* the 'Law of the Land' by which all state and federal courts in this country are 'bound.'" Reply Brief for Petitioner 1. Accordingly, Medellín argues, *Avena* is a binding federal rule of decision that pre-empts contrary state limitations on successive habeas petitions.

No one disputes that the *Avena* decision—a decision that flows from the treaties through which the United States submitted to ICJ jurisdiction with respect to Vienna Convention disputes—constitutes an *international* law obligation on the part of the United States. But not all international law obligations automatically constitute binding federal law enforceable in United States courts. The question we confront here is whether the *Avena* judgment has automatic *domestic* legal effect such that the judgment of its own force applies in state and federal courts.

This Court has long recognized the distinction between treaties that automatically have effect as domestic law, and those that—while they constitute international law commitments—do not by themselves function as binding federal law. The distinction was well explained by Chief Justice Marshall's opinion in *Foster* v. *Neilson*, 2 Pet. 253, 315 (1829), overruled on other grounds, *United States* v. *Percheman*, 7 Pet. 51 (1833), which held that a treaty is "equivalent to an act of the legislature," and hence self-executing, when it "operates of itself without the aid of any legislative provision." *Foster*, *supra*, at 314. When, in contrast, "[treaty] stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect." *Whitney* v. *Robertson*, 124 U. S. 190, 194 (1888). In sum, while treaties "may comprise international commitments . . . they are not domestic law unless Congress has either enacted implementing statutes or the

treaty itself conveys an intention that it be 'self-executing' and is ratified on these terms." *Igartúa-De La Rosa* v. *United States*, 417 F. 3d 145, 150 (CA1 2005) (en banc) (Boudin, C. J.).[2]

A treaty is, of course, "primarily a compact between independent nations." *Head Money Cases*, 112 U. S. 580, 598 (1884). It ordinarily "depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it." *Ibid.*; see also The Federalist No. 33, p. 207 (J. Cooke ed. 1961) (A. Hamilton) (comparing laws that individuals are "bound to observe" as "the supreme law of the land" with "a mere treaty, dependent on the good faith of the parties"). "If these [interests] fail, its infraction becomes the subject of international negotiations and reclamations . . . It is obvious that with all this the judicial courts have nothing to do and can give no redress." *Head Money Cases*, *supra*, at 598. Only "[i]f the treaty contains stipulations which are self-executing, that is, require no legislation to make them operative, [will] they have the force and effect of a legislative enactment." *Whitney*, *supra*, at 194.[3]

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[2]The label "self-executing" has on occasion been used to convey different meanings What we mean by "self-executing" is that the treaty has automatic domestic effect as federal law upon ratification Conversely, a "non-self-executing" treaty does not by itself give rise to domestically enforceable federal law. Whether such a treaty has domestic effect depends upon implementing legislation passed by Congress.

[3]Even when treaties are self-executing in the sense that they create federal law, the background presumption is that "[i]nternational agreements, even those directly benefiting private persons, generally do not create private rights or provide for a private cause of action in domestic courts." 2 Restatement (Third) of Foreign Relations Law of the United States §907, Comment *a*, p. 395 (1986) (hereinafter Restatement). Accordingly, a number of the Courts of Appeals have presumed that treaties do not create privately enforceable rights in the absence of express language to the contrary See, *e.g.*, *United States* v. *Emuegbunam*, 268 F 3d 377, 389 (CA6 2001); *United States* v. *Jimenez-*

Medellin and his *amici* nonetheless contend that the Optional Protocol, United Nations Charter, and ICJ Statute supply the "relevant obligation" to give the *Avena* judgment binding effect in the domestic courts of the United States. Reply Brief for Petitioner 5–6.[4] Because none of these treaty sources creates binding federal law in the absence of implementing legislation, and because it is uncontested that no such legislation exists, we conclude that the *Avena* judgment is not automatically binding domestic law.

A

The interpretation of a treaty, like the interpretation of a statute, begins with its text. *Air France* v. *Saks*, 470 U. S. 392, 396–397 (1985). Because a treaty ratified by the United States is "an agreement among sovereign powers," we have also considered as "aids to its interpretation" the negotiation and drafting history of the treaty as well as "the postratification understanding" of signatory nations. *Zicherman* v. *Korean Air Lines Co.*, 516 U. S. 217, 226 (1996); see also *United States* v. *Stuart*, 489 U. S. 353, 365–366 (1989); *Choctaw Nation* v. *United States*, 318

Nava, 243 F. 3d 192, 195 (CA5 2001); *United States* v. *Li*, 206 F. 3d 56, 60–61 (CA1 2000) (en banc); *Goldstar (Panama) S. A.* v. *United States*, 967 F. 2d 965, 968 (CA4 1992); *Canadian Transp. Co.* v. *United States*, 663 F. 2d 1081, 1092 (CADC 1980); *Mannington Mills, Inc.* v. *Congoleum Corp.*, 595 F. 2d 1287, 1298 (CA3 1979).

[4]The question is whether the *Avena* judgment has binding effect in domestic courts under the Optional Protocol, ICJ Statute, and U N Charter. Consequently, it is unnecessary to resolve whether the Vienna Convention is itself "self-executing" or whether it grants Medellin individually enforceable rights. See Reply Brief for Petitioner 5 (disclaiming reliance on the Vienna Convention). As in *Sanchez-Llamas*, 548 U. S., at 342–343, we thus assume, without deciding, that Article 36 grants foreign nationals "an individually enforceable right to request that their consular officers be notified of their detention, and an accompanying right to be informed by authorities of the availability of consular notification."

U. S. 423, 431–432 (1943).

As a signatory to the Optional Protocol, the United States agreed to submit disputes arising out of the Vienna Convention to the ICJ. The Protocol provides: "Disputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice." Art. 1, 21 U. S. T., at 326. Of course, submitting to jurisdiction and agreeing to be bound are two different things. A party could, for example, agree to compulsory nonbinding arbitration. Such an agreement would require the party to appear before the arbitral tribunal without obligating the party to treat the tribunal's decision as binding. See, *e.g.*, North American Free Trade Agreement, U. S.-Can.-Mex., Art. 2018(1), Dec. 17, 1992, 32 I. L. M. 605, 697 (1993) ("On receipt of the final report of [the arbitral panel requested by a Party to the agreement], the disputing Parties shall agree on the resolution of the dispute, which normally shall conform with the determinations and recommendations of the panel").

The most natural reading of the Optional Protocol is as a bare grant of jurisdiction. It provides only that "[d]isputes arising out of the interpretation or application of the [Vienna] Convention shall lie within the compulsory jurisdiction of the International Court of Justice" and "may accordingly be brought before the [ICJ] . . . by any party to the dispute being a Party to the present Protocol." Art. I, 21 U. S. T., at 326. The Protocol says nothing about the effect of an ICJ decision and does not itself commit signatories to comply with an ICJ judgment. The Protocol is similarly silent as to any enforcement mechanism

The obligation on the part of signatory nations to comply with ICJ judgments derives not from the Optional Protocol, but rather from Article 94 of the United Nations Charter—the provision that specifically addresses the effect of ICJ decisions. Article 94(1) provides that "[e]ach Member

of the United Nations *undertakes to comply* with the decision of the [ICJ] in any case to which it is a party." 59 Stat. 1051 (emphasis added). The Executive Branch contends that the phrase "undertakes to comply" is not "an acknowledgement that an ICJ decision will have immediate legal effect in the courts of U. N. members," but rather "a *commitment* on the part of U. N. Members to take *future* action through their political branches to comply with an ICJ decision." Brief for United States as *Amicus Curiae* in *Medellín I*, O. T. 2004, No. 04–5928, p. 34.

We agree with this construction of Article 94. The Article is not a directive to domestic courts. It does not provide that the United States "shall" or "must" comply with an ICJ decision, nor indicate that the Senate that ratified the U. N. Charter intended to vest ICJ decisions with immediate legal effect in domestic courts. Instead, "[t]he words of Article 94 . . . call upon governments to take certain action." *Committee of United States Citizens Living in Nicaragua* v. *Reagan*, 859 F. 2d 929, 938 (CADC 1988) (quoting *Diggs* v. *Richardson*, 555 F. 2d 848, 851 (CADC 1976); internal quotation marks omitted). See also *Foster*, 2 Pet., at 314, 315 (holding a treaty non-self-executing because its text—"'all . . . grants of land . . . shall be ratified and confirmed'"—did not "act directly on the grants" but rather "pledge[d] the faith of the United States to pass acts which shall ratify and confirm them"). In other words, the U. N. Charter reads like "a compact between independent nations" that "depends for the enforcement of its provisions on the interest and the honor of the governments which are parties to it." *Head Money Cases*, 112 U. S., at 598.[5]

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[5] We do not read "undertakes" to mean that "'"[t]he United States shall be at liberty to make respecting th[e] matter, such laws as they think proper."'" *Post*, at 17–18 (BREYER, J., dissenting) (quoting *Todok* v *Union State Bank of Harvard*, 281 U. S. 449, 453, 454 (1930) (holding that a treaty with Norway did *not* "operat[e] to override the law of

The remainder of Article 94 confirms that the U. N. Charter does not contemplate the automatic enforceability of ICJ decisions in domestic courts.[6] Article 94(2)—the enforcement provision—provides the sole remedy for noncompliance: referral to the United Nations Security Council by an aggrieved state. 59 Stat. 1051.

The U. N. Charter's provision of an express diplomatic—that is, nonjudicial—remedy is itself evidence that ICJ judgments were not meant to be enforceable in domestic courts. See *Sanchez-Llamas*, 548 U. S., at 347. And even this "quintessentially *international* remed[y]," *id.*, at 355, is not absolute. First, the Security Council must "dee[m] necessary" the issuance of a recommendation or measure to effectuate the judgment. Art. 94(2), 59 Stat. 1051. Second, as the President and Senate were undoubtedly aware in subscribing to the U. N. Charter and Optional Protocol, the United States retained the unqualified right to exercise its veto of any Security Council resolution.

This was the understanding of the Executive Branch when the President agreed to the U. N. Charter and the declaration accepting general compulsory ICJ jurisdiction.

[Nebraska] as to the disposition of homestead property")). Whether or not the United States "undertakes" to comply with a treaty says nothing about what laws it may enact. The United States is *always* "at liberty to make . . . such laws as [it] think[s] proper." *Id.*, at 453. Indeed, a later-in-time federal statute supersedes inconsistent treaty provisions. See, *e.g.*, *Cook* v. *United States*, 288 U. S. 102, 119–120 (1933). Rather, the "undertakes to comply" language confirms that further action to give effect to an ICJ judgment was contemplated, contrary to the dissent's position that such judgments constitute directly enforceable federal law, without more. See also *post*, at 1–3 (STEVENS, J., concurring in judgment).

[6] Article 94(2) provides in full: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." 59 Stat. 1051.

See, *e.g.*, The Charter of the United Nations for the Maintenance of International Peace and Security: Hearings before the Senate Committee on Foreign Relations, 79th Cong., 1st Sess., 124–125 (1945) ("[I]f a state fails to perform its obligations under a judgment of the [ICJ], the other party may have recourse to the Security Council"); *id.*, at 286 (statement of Leo Pasłovsky, Special Assistant to the Secretary of State for International Organizations and Security Affairs) ("[W]hen the Court has rendered a judgment and one of the parties refuses to accept it, then the dispute becomes political rather than legal. It is as a political dispute that the matter is referred to the Security Council"); A Resolution Proposing Acceptance of Compulsory Jurisdiction of International Court of Justice: Hearings on S. Res. 196 before the Subcommittee of the Senate Committee on Foreign Relations, 79th Cong., 2d Sess., 142 (1946) (statement of Charles Fahy, State Dept. Legal Adviser) (while parties that accept ICJ jurisdiction have "a moral obligation" to comply with ICJ decisions, Article 94(2) provides the exclusive means of enforcement).

If ICJ judgments were instead regarded as automatically enforceable domestic law, they would be immediately and directly binding on state and federal courts pursuant to the Supremacy Clause. Mexico or the ICJ would have no need to proceed to the Security Council to enforce the judgment in this case. Noncompliance with an ICJ judgment through exercise of the Security Council veto—always regarded as an option by the Executive and ratifying Senate during and after consideration of the U. N. Charter, Optional Protocol, and ICJ Statute—would no longer be a viable alternative. There would be nothing to veto. In light of the U. N. Charter's remedial scheme, there is no reason to believe that the President and Senate signed up for such a result.

In sum, Medellin's view that ICJ decisions are automatically enforceable as domestic law is fatally under-